



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

**BRAD LITTLE**  
Governor

**GARY SPACKMAN**  
Director

August 14, 2019

DIANA LACHIONDO, COMMISSIONER  
RICK VISSER, COMMISSIONER  
KENDRA KENYON, COMMISSIONER  
ADA COUNTY COMMISSION  
200 W FRONT ST 3<sup>RD</sup> FL  
BOISE ID 83702

FULCRUM LLC  
921 S ORCHARD ST STE G  
BOISE ID 83705

ENEL GREEN POWER NORTH AMERICAN INC  
921 S ORCHARD ST STE G  
BOISE ID 83705

*CERTIFIED MAIL AND HAND DELIVERED*

**RE: Notice of Violation No. E2019-1443**

Dear Respondents:

The purpose of this letter is to notify you that violations of state law are hereby attributed to Ada County, Fulcrum, LLC, and Enel Green Power North American, Inc., by the Idaho Department of Water Resources (“Department”). This Notice of Violation (“NOV”) is issued pursuant to Idaho Code § 42-1701B. The NOV is associated with the unauthorized diversion of the Boise River in Township 03 North, Range 03 East of Section 29 in Ada County. The site associated with the NOV is the Barber Dam hydropower facility.

During the early morning hours of August 2, 2019, multiple downstream canal operators notified the Boise River Watermaster of reduced canal diversions. Communication between the Barber Dam facility and downstream canal companies confirmed that a power failure occurred at Barber Dam beginning at roughly 1:00 am on August 2, 2019. The power outage lasted more than an hour and resulted in the interruption of the Boise River flow downstream for a period of time. Upon restoration of power at Barber Dam, Boise River flows spiked for a short time causing potentially dangerous conditions in the river.

The violation of Title 42, Idaho Code attributed to you is specifically listed below:

Idaho Code § 42-351(1) – Diversion or use of water without a valid water right or diversion or use of water not in conformance with a valid water right.

As authorized by Idaho Code § 42-351, and in accordance with Idaho Code § 42-1701B, the maximum penalty for water diverted without authorization is fifty dollars (\$50) per one-tenth (0.01) cubic feet per second (“cfs”). During the time of the outage, the Bureau of Reclamation’s (“BOR”) Hydromet data show that the average Boise River flow immediately downstream from Lucky Peak

was 3,710 cfs. The Department subtracted diversions located between Lucky Peak and Barber Dam as recorded by the BOR or the Water District 63 watermaster. The Department estimates that 1,665 cfs of water from the Boise River was diverted by Barber Dam during the power outage. The total penalty for diverting 1,665 cfs is \$832,500; however, the statutory maximum civil penalty is \$50,000. The following immediate redress and payment of civil penalties associated with the violation are:

1. Cease any further diversions of water at Barber Dam that interrupt flows in the Boise River downstream of Barber Dam; and
2. By September 1, 2019, pay the maximum civil penalty of \$50,000 for diverting 1,665 cfs of water at Barber Dam.

Failure to comply with this requirement may be cause for the Department to initiate a civil action through the Attorney General's office.

If you would like to discuss any of the provisions of this NOV, you may request a compliance conference. A compliance conference must be requested within 14 days of receiving this notice. The recipient of an NOV will be provided an opportunity to explain the circumstance of the alleged violation(s) and present a plan to assure future compliance. Any agreement reached between the Department and the recipient of the NOV will be formalized through a Consent Agreement.

The Department wants to ensure the Federal Energy Regulatory Commission ("FERC") is made aware of this NOV. Therefore, please include a copy of this NOV in the FERC relicensing record.

Please contact Rob Whitney directly at (208) 287-4924 if you have questions regarding this matter or to schedule a compliance conference.

Respectfully,



Gary Spackman  
Director

cc: Lorna K. Jorgensen, Deputy Prosecuting Attorney, Ada County  
Rex Barrie, Watermaster, Water District 63